



ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY



**Mertola, LLC v. Albert J. and Arlene Santos**  
**CV-17-0109**  
**241 Ariz. 572**

**PARTIES:**

*Petitioner/Defendant:* Alberto and Arlene Santos

*Respondent/Plaintiff:* Mertola LLC

*Amicus Curiae:* Arizona Chapter of the National Consumer Advocates

**FACTS:**

Albert and Arlene Santos (“**Borrowers**”) accepted a credit card from Washington Mutual Bank and the terms were in the Account Agreement. The credit card initially had a \$25,000 limit and required monthly minimum payments with interest. Borrowers made their required payments without incident but were late on two payments in 2007. The bank raised their interest rate. Borrowers caught up on their payments and were current until the January 2008 payment came due. When they missed the January 2008 payment, the Bank notified them on the February 25, 2008 statement that they owed a balance of \$14,277. The Bank reduced their credit limit to \$14,583, eliminated any cash advances and requested a minimum payment of \$1,165. In the March 26, 2008 statement, the outstanding balance exceeded the credit limit, and Bank charged a late fee and over-limit charge.

All additional sums were from interest and late fees; Borrowers did not use the card for any new charges. Washington Mutual assigned the debt to Mertola, and Mertola filed a collection action against Borrowers. In its June 17, 2014 complaint Mertola alleged the balance due was \$17,066.91 and requested judgment in that amount. The Borrowers filed a motion for summary judgment claiming that the complaint was barred because Arizona has a six-year statute of limitations and Mertola filed the complaint more than six-years after the debt was due. In its response, Mertola reduced the amount it was seeking. It excluded \$2,825 because Mertola acknowledged the amounts due as of June 2008 fell outside the statute of limitations. Mertola also voluntarily reduced the claim an additional \$1,000, and calculated that after these concessions the sum of \$13,241.91 was due.

The Account Agreement provided:

**14. Default. You will be in default:** if you were not eligible for the Account at the time it was opened; **if you fail to pay any amount due to us or to any other creditor**, if you fail to comply with any part of this Agreement; if any information you gave us proves to be incomplete or false; upon your death, bankruptcy, or insolvency, if a bankruptcy petition is filed by or against you, **or if we believe in**

**good faith that you may not pay** or perform your obligations under this Agreement. **On your default, we may, without further demand or notice,** cancel your credit privileges, **declare your Account balance immediately due and payable, and invoke any remedy we may have.** In the event of your default, the outstanding balance on your Account shall continue to accrue interest at the Annual Percentage Rate(s) disclosed in the Finance Charges section of this Agreement, even if we have sued you to collect the amount you owe.

**15. Waiver of Certain Rights.** We may delay or waive enforcement of any provision of this Agreement without losing our right to enforce it or any other provision later. **You waive: the right to presentment, demand,** protest or notice of dishonor; **any applicable statute of limitation;** and any right you may have to require us to proceed against anyone before we sue you.

The superior court granted Borrowers' motion for summary judgment, reasoning that the claim was barred by the applicable six-year statute of limitations because it accrued when Borrowers breached by failing to make monthly payments since February of 2008, more than six years before Mertola sued in June of 2014.

The court of appeals reversed. It observed that an action for breach of a credit-card agreement must be brought within six years after it accrues. A.R.S. § 12-548(A)(2). Because there was no indication that either Washington Mutual or Mertola accelerated the debt and demanded payment of the full amount due, the statute of limitations only prohibited collecting the minimum monthly payments that were more than six-years past due.

**ISSUE PRESENTED:**

Did the Court of Appeals err by applying the rule governing the accrual of a statute of limitations for an installment loan to a credit card account, thereby effectively eliminating the statute of limitations on credit card debt in Arizona? There are no additional issues that this Court needs to consider if review is granted.

**APPLICABLE STATUTE:**

**§ 12-548. Contract in writing for debt; six year limitation; choice of law**

**A.** An action for debt shall be commenced and prosecuted within six years after the cause of action accrues, and not afterward, if the indebtedness is evidenced by or founded on either of the following:

1. A contract in writing that is executed in this state.
2. A credit card as defined in § 13-2101, paragraph 3, subdivision (a).

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